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HONIGMAN MILLER SCHWARTZ & COHN LLP
38500 WOODWARD AVENUE
SUITE 100
BLOOMFIELD HILLS MI 48304-5048

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OFFICE OF PETITIONS

In re Application of	:	
Schonlau et al.	:	
Application No. 09/194,631	:	DECISION ON PETITION
Filed: November 30, 1998	:	
Attorney Docket No. AP8708	:	

This is a decision on the petition filed on March 18, 2002, to withdraw the holding of abandonment. The petition was recently forwarded to the Office of Petitions for a decision on the merits. The undersigned immediately considered the petition upon its receipt in the Office. The Office sincerely apologizes for any inconvenience.

The application became abandoned for failure to reply timely to the nonfinal Office Action mailed on April 27, 2001, which set a three-month shortened statutory period for reply. In the absence of a timely filed response, the application became abandoned on July 28, 2001. A Notice of Abandonment was mailed on November 29, 2001.

In the present petition, petitioner requests that the Office withdraw the holding of abandonment due to non-receipt of the nonfinal Office Action mailed on April 27, 2001. The practitioner asserts that a search of the file jacket and docket records indicate that the nonfinal Office Action was not received. In support of the assertion, the practitioner submits the following: a copy of the file jacket for the subject application; a copy of pages 9-12 printed on May 15, 2001 of the electronic docket of the practitioner maintained by the law firm of Rader Fishman & Grauer; and, a copy of the practitioner's electronic docket as printed on June 1, 2001. The practitioner asserts that there is no entry for an Office Action for this application in the file jacket and docket records.

A review of the record indicates no irregularity in the mailing of the nonfinal Office Action, and in the absence of any irregularity in the mailing, there is a strong presumption that the nonfinal Office Action was properly mailed to the address of record, as it existed on April 27, 2001. This presumption may be overcome by a showing that the nonfinal Office Action was not in fact received. The showing required to establish non-receipt of an Office communication must include a statement from the practitioner, stating that the practitioner did not receive the Office communication and attesting to the fact that a

search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.¹ For example, if a three-month period for reply was set in the non-received Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the non-received Office action must be submitted as documentary proof of non-receipt of the Office action.

The showing of record is insufficient to warrant withdrawal of the holding of abandonment at this time. Specifically, the record indicates that petitioner submitted a change of correspondence address with the USPTO on June 7, 2001. The practitioner must submit a statement indicating the date that the law firm changed their location from 1533 N. Woodward Avenue, Suite 140, Bloomfield, MI 48304 to 39533 Woodward Avenue, Suite 140, Bloomfield, MI 48304. The showing outlined in the petition would not be sufficient if there were circumstances that pointed to a conclusion that the practitioner did not receive the nonfinal Office Action because the practitioner did not timely submit a change of correspondence address with the USPTO.

The petition to withdraw the holding of abandonment is **dismissed**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." Extensions of time are permitted under 37 CFR 1.136(a). In the alternative, petitioner may file a petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application.

Further correspondence with respect to this matter should be addressed as follows and **to the attention of Senior Petitions Attorney Christina Tartera Donnell**:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (571) 273-8300
 Attn: Office of Petitions

By hand: Customer Service Window
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

¹ M.P.E.P. § 711.03(c); See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3211.

Christina T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions